

**ASSEMBLY BILL**

**No. 22**

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**Introduced by Assembly Member Patterson**

September 1, 2015

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An act to amend Sections 6821 and 6829 of the Public Contract Code, and to repeal Section 91.2 of the Streets and Highway Code, relating to design-build procurement.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as introduced, Patterson. Design-build: highways.

Existing law authorizes the Department of Transportation to utilize design-build procurement for up to 10 projects on the state highway system, based on either best value or lowest responsible bid. Existing law requires the department to perform construction inspection services for those projects that are on or interfacing with the state highway system, as specified. Existing law establishes a procedure for submitting bids that includes a requirement that design-build entities provide a statement of qualifications submitted to the transportation entity that is verified under oath, subject to penalty of perjury.

This bill would authorize the department to utilize design-build procurement on an unlimited number of projects and would require the department to contract with consultants to perform construction inspection services for those authorized projects. The bill would eliminate the requirement that the department perform the construction inspection services for the projects on or interfacing with the state highway system. By authorizing the design-build method of procurement to be utilized in an unlimited number of projects, the bill would expand the number of projects in which the statement of qualifications requirement, subject to penalty of perjury, is applicable, thereby

expanding the scope of an existing crime and imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6821 of the Public Contract Code is  
2 amended to read:

3 6821. (a) The department may utilize the design-build method  
4 of procurement for ~~up to 10~~ projects on the state highway system,  
5 based on either best value or lowest responsible bid. *The*  
6 *department shall contract with consultants to perform construction*  
7 *inspection services for projects authorized by this subdivision.*  
8 *Construction inspection services include, but are not limited to,*  
9 *material source testing, certification testing, surveying, monitoring*  
10 *of environmental compliance, independent quality control testing*  
11 *and inspection, and quality assurance audits.*

12 (b) A regional transportation agency may utilize the design-build  
13 method of procurement to design and construct projects on or  
14 adjacent to the state highway system, including related nonhighway  
15 portions of the project, based on either best value or lowest  
16 responsible bid. A regional transportation agency and the  
17 department shall enter into a cooperative agreement reflecting the  
18 roles and responsibilities assigned by law for a project on or  
19 interfacing with the state highway system authorized under this  
20 subdivision. The cooperative agreement shall also include the  
21 requirement to develop a mutually agreed upon issue resolution  
22 process with a primary objective to ensure the project stays on  
23 schedule and issues between the parties are resolved in a timely  
24 manner.

25 (c) (1) A regional transportation agency may utilize the  
26 design-build method of procurement, based on either best value  
27 or lowest responsible bid, to design and construct projects on  
28 expressways that are not on the state highway system if the projects

1 are developed in accordance with an expenditure plan approved  
2 by voters as of January 1, 2014.

3 (2) The entity responsible for the maintenance of the local streets  
4 and roads within the jurisdiction of the expressway shall be  
5 responsible for the maintenance of the expressway.

6 (d) A city, county, or city and county shall not utilize the  
7 design-build method of procurement under this chapter. A regional  
8 transportation agency shall not utilize the design-build method of  
9 procurement on behalf of a city, county, or city and county.

10 ~~(e) The design-build authorization in subdivisions (a) and (b)~~  
11 ~~shall not include the authority to perform construction inspection~~  
12 ~~services for projects on or interfacing with the state highway~~  
13 ~~system, which shall be performed by the department consistent~~  
14 ~~with Section 91.2 of the Streets and Highway Code.~~

15 ~~(f)~~

16 (e) (1) Not later than the first day of July that occurs two years  
17 after a design-build contract is awarded, and each July 1 thereafter  
18 until a project is completed, the department or the regional  
19 transportation agency shall submit a report on the progress of the  
20 project and compliance with this section to the legislative policy  
21 committees having jurisdiction over transportation matters.

22 (2) The requirement of submitting a report imposed under  
23 paragraph (1) is inoperative on the first day of July four years after  
24 the first report was submitted, pursuant to Section 10231.5 of the  
25 Government Code.

26 (3) A report to be submitted pursuant to paragraph (1) shall be  
27 submitted in compliance with Section 9795 of the Government  
28 Code.

29 SEC. 2. Section 6829 of the Public Contract Code is amended  
30 to read:

31 6829. (a) This chapter shall remain in effect only until January  
32 1, 2024, and as of that date is repealed, unless a later enacted  
33 statute, that is enacted before January 1, 2024, deletes or extends  
34 that date.

35 ~~(b) Notwithstanding subdivision (a), if any provision or~~  
36 ~~application of Section 91.2 of the Streets and Highways Code is~~  
37 ~~held invalid by a court of competent jurisdiction, this chapter shall~~  
38 ~~be repealed one year from the date in which the department posts~~  
39 ~~on its Internet Web site that Section 91.2 of the Streets and~~  
40 ~~Highways Code has been held invalid.~~

1 (e)

2 (b) The repeal of this chapter shall not affect an executed  
3 design-build contract or cooperative agreement entered into  
4 pursuant to this chapter prior to the date of its repeal, regardless  
5 of the stage of the project at the time of repeal.

6 SEC. 3. Section 91.2 of the Streets and Highways Code is  
7 repealed.

8 ~~91.2. (a) The department shall perform construction inspection~~  
9 ~~services for projects on or interfacing with the state highway system~~  
10 ~~authorized pursuant to Chapter 6.5 (commencing with Section~~  
11 ~~6820) of Part 1 of Division 2 of the Public Contract Code. The~~  
12 ~~department shall use department employees or consultants under~~  
13 ~~contract with the department to perform the services described in~~  
14 ~~this subdivision and subdivision (b), consistent with Article XXII~~  
15 ~~of the California Constitution. Construction inspection services~~  
16 ~~performed by the department for those projects include, but are~~  
17 ~~not limited to, material source testing, certification testing,~~  
18 ~~surveying, monitoring of environmental compliance, independent~~  
19 ~~quality control testing and inspection, and quality assurance audits.~~  
20 ~~The construction inspection duties and responsibilities of the~~  
21 ~~department shall include a direct reporting relationship between~~  
22 ~~the inspectors and senior department engineers responsible for all~~  
23 ~~inspectors and construction inspection services. The senior~~  
24 ~~department engineer responsible for construction inspection~~  
25 ~~services shall be responsible for the acceptance or rejection of the~~  
26 ~~work.~~

27 ~~(b) Notwithstanding any other law, the department shall retain~~  
28 ~~the authority to stop the contractor's operation wholly or in part~~  
29 ~~and take appropriate action when public safety is jeopardized on~~  
30 ~~a project on or interfacing with the state highway system authorized~~  
31 ~~pursuant to Chapter 6.5 (commencing with Section 6820) of Part~~  
32 ~~1 of Division 2 of the Public Contract Code. The department shall~~  
33 ~~ensure that public safety and convenience is maintained whenever~~  
34 ~~work is performed under an encroachment permit within the state~~  
35 ~~highway right-of-way, including, but not limited to, work~~  
36 ~~performed that includes lane closures, signing, work performed at~~  
37 ~~night, detours, dust control, temporary pavement quality, crash~~  
38 ~~cushions, temporary railings, pavement transitions, falsework,~~  
39 ~~shoring, and delineation. The department shall regularly inspect~~  
40 ~~the job sites for safety compliance and any possible deficiencies.~~

1 If any deficiency is observed, a written notice shall be sent by the  
2 department to the regional transportation agency's designated  
3 resident engineer to correct the deficiency. Once the deficiency is  
4 corrected, a written notice describing the resolution of the  
5 deficiency shall be sent to the department and documented.

6 (e) ~~The department shall use department employees or~~  
7 ~~consultants under contract with the department to perform the~~  
8 ~~services described in subdivisions (a) and (b), consistent with~~  
9 ~~Article XXII of the California Constitution. Department employee~~  
10 ~~and consultant resources necessary for the performance of those~~  
11 ~~services, including personnel requirements, shall be included in~~  
12 ~~the department's capital outlay support program for workload~~  
13 ~~purposes in the annual Budget Act.~~

14 (d) ~~“Construction inspection services” shall not include~~  
15 ~~surveying work performed as part of a design-build contract.~~

16 (e) ~~This section shall remain in effect only until January 1, 2024,~~  
17 ~~and as of that date is repealed, unless a later enacted statute, that~~  
18 ~~is enacted before January 1, 2024, deletes or extends that date.~~

19 (f) ~~If any provision or application of this section is held invalid~~  
20 ~~by a court of competent jurisdiction, the department shall post on~~  
21 ~~its Internet Web site within 10 business days of the decision of~~  
22 ~~invalidity that this section has been held invalid.~~

23 SEC. 4. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.

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